IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2005

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE S.K.KRISHNAN

C.M.A.No.2747 of 2003

M.Padmavathi .. Appellant (Defendant)

-Vs-

C.Senthilvelan .. Respondent (Plaintiff)

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Order 43 Rule 1(d) of the Code of Civil Procedure, 1908 against the fair and final order dated 28.4.2003 made in I.A.No.794 of 2002 in O.S.No.42 of 2002 on the file of the Additional District Judge-Fast Track Court No.4, Coimbatore at Tirupur.

For Appellant :: Mr.T.Muruga Manickam

For Respondent :: Mr.Palani Selvaraj

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

By consent of both parties, the main appeal itself is taken up for disposal.

2. The appeal is directed against the order of the Additional District Judge-Fast Track Court No.4, Coimbatore at Tirupur dated 28.4.2003 made in I.A.No.794 of 2002 in O.S.No.42 of 2002 in and by which the petition filed under Order 9 Rule 13 C.P.C. for setting aside the ex parte decree has been dismissed.

3. Heard both sides. The appellant herein, defendant in O.S.No.556 of 2000, which was renumbered as O.S.No.42 of 2002 on the file of the Additional District Judge-Fast Track Court No.4, Coimbatore at Tirupur, did not appear when the suit was posted on 18.11.2002 for examination of P.W.1. After recording her absence, the Court below set her ex parte and passed an ex parte decree on 18.11.2002. Thereafter, she filed I.A.No.794 of 2002 under Order 9 Rule 13 C.P.C. to set aside the ex parte decree setting out reasons for her illness and also the illness of her husband. The Court below, on going through the reasons stated in the affidavit, in the absence of medical certificate in support

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of her claim, dismissed the application. Hence, the present appeal.

4. We have perused the reasons stated by her in the affidavit filed in support of the said application. It is not in dispute that the said application had been filed within the time prescribed. There is no delay in filing the said application. In the affidavit it is stated that all along she had been attending the Court without fail. However, according to her, her husband suffered a severe heart ailment and she had to be with him in the hospital. Because of the said reason both herself and her husband could not attend the Court on the said date i.e., 18.11.2002 and her counsel was also not informed about the same. The respondent herein filed a counter statement disputing the claim made by the petitioner therein. On going through the reasons stated in the affidavit we are of the view that, though the petitioner therein had not produced the medical certificate in support of her claim, in view of her assertion that herself and her husband were attending Court for all the previous hearings, there is no reason to reject the same. We are also satisfied that her statement seems to be a bona fide one and there is no mala fide intention in abstaining the Court on 18.11.2002. This material aspect has not been considered by the Court below. We are satisfied that the petitioner therein-appellant has made out a case for setting aside the ex parte decree and we are also satisfied that there was sufficient cause for not attending to the Court proceedings on 18.11.2002.

5. In the light of what is stated above, the order dated 28.4.2003 made in I.A.No.794 of 2002 is set aside and the civil miscellaneous appeal is allowed. Considering the fact that P.W.1 has already been examined, we direct the Court below to dispose of the suit on merits on or before 30.6.2005 after affording opportunity to both parties.

6. With the above direction, the civil miscellaneous appeal is allowed. No costs. Consequently, C.M.P.No.14226 of 2004 is closed.

09.03.2005

ss

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Additional District Judge-
Fast Track Court No.IV
Coimbatore at Tirupur

2. The Record Keeper,
VR. Section
High Court, Madras.

1 cc to Mr.Palani, Advocate SR.11206

1 cc to Mr.T.Murugamanickam, Advocate, SR.11366

pv (co)

dv

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